

FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

JUN 06 2006

NEBRASKA DEPARTMENT
OF INSURANCE

IN THE MATTER OF THE DENIAL OF)	FINDINGS OF FACT,
APPLICATION FOR LICENSE FOR)	CONCLUSIONS OF LAW, AND
HEATHER EVERS)	RECOMMENDED ORDER
)	AND ORDER
)	
)	CAUSE NO. A-1667
)	

This matter came on for hearing on the 31st day of May, 2006, before Christine Neighbors, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The matter arises out of a denial of an application for a resident insurance producer license. The Department of Insurance ("Department") was represented by its attorney, Martin Swanson. Heather Evers ("Applicant") was present and was not represented by counsel. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Applicant and the Department presented evidence and testimony at the hearing. David Easterby provided testimony on behalf of Applicant. The matter was taken under advisement. The hearing officer hereby makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing insurance producers.
2. On or about March 31, 2006, Applicant applied for a resident insurance producer license as evidenced by Exhibit 5. Applicant reported that she had been convicted

of a misdemeanor on March 28, 2006, of attempting to acquire controlled substance and was sentenced to one-year probation.

3. On or about April 3, 2006, Beverly Creager, Licensing Administrator for the Nebraska Department of Insurance, notified Applicant that her application for an insurance producer's license was denied based upon *Neb. Rev. Stat. §44-4059(1)(f)* for having been convicted of a felony or Class I, II or III misdemeanor. (Ex. 5).

4. Applicant requested a hearing to appeal the Department's denial for an insurance producer's license. (Ex. 7). Although it appears that the letter was not provided to the Department until it was faxed on May 9, 2006, the letter was received on or about April 11, 2006, and the faxed copy introduced as Exhibit 7 was provided at the Department's request.

5. Applicant is employed with David Easterby's State Farm Insurance Agency. She currently works servicing automobile and homeowner insurance clients and, if granted a license, would be able to sell personal lines insurance coverages to clients.

6. Applicant testified, and offered Exhibits 1 (medical records and law enforcement records) and 7 in support of her testimony, that she had become ill in September 2005. As a result of her illness, she was subject to a number of medical tests as her symptoms worsened and the medical providers could not determine what was causing her medical problems. Eventually, Applicant was diagnosed with pneumonia on October 8, 2005, and she was treated and recovered.

7. Applicant testified that she had trouble breathing for a number of days before the pneumonia diagnosis and her physician prescribed valium, which did help her breathe. After receiving a prescription for a refill, Applicant altered the prescription to change the

quantity. Applicant testified that she altered the prescription because she was afraid that she would die since she was not able to breathe and the valium was the only medication that helped her.

8. On or about September 27, 2005, Applicant was ticketed for acquiring a controlled substance by fraud, a Class IV Felony, which was later reduced to Criminal Intent to Possess a Controlled Substance, a Class I Misdemeanor. (Ex. 8).

9. Applicant testified that she was not thinking clearly when she altered the prescription, but admits that she did it and will take responsibility for her actions. The hearing officer notes that during the course of her medical treatment and testing beginning on or about September 13, 2005 ending October 19, 2005, Applicant was prescribed no less than twelve medications for various problems and/or symptoms. At any one point in time, Applicant may have been on seven different prescribed medications. (Ex. 1).

10. On or about December 23, 2005, Sharon Wiese, LADC, evaluated Applicant for chemical dependency. (Ex. 2). Ms. Wiese opined that Applicant did not appear to be chemically dependent.

11. On January 30, 2006, Applicant pleaded guilty to a Class I Misdemeanor, Criminal Intent to Possess a Controlled Substance. (Ex. 8). On March 28, 2006, Applicant was sentenced to probation for twelve months, which includes 100 hours of community service and random drug testing. Applicant is completing her community service requirements at a women's shelter. Random drug testing, which was administered two or three times in the course of her probation thus far, was negative for illegal substances.

12. In support of the application, Applicant provided a letter from her probation officer, Melanie Berry, Senior Probation Officer, dated May 22, 2006, in which Officer Berry

stated that Applicant is randomly drug tested and all tests have been negative for illegal substances. Applicant is completing the community service hours and appears to be motivated and professional when in the presence of Officer Berry. (Ex. 3).

13. The granting of a license by the Department is based upon the truth and veracity of the facts disclosed in the application, the testimony given and the evidence introduced into the record at the hearing. The hearing officer finds Applicant to be a credible witness.

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control and discretion over the licensing of insurance producers to sell insurance in the State of Nebraska pursuant to *Neb. Rev. Stat.* §44-101.01 and §44-4047 *et seq.*

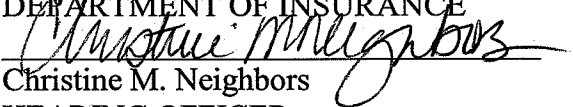
2. The Department has personal jurisdiction over Applicant.

3. The conviction of a Class I misdemeanor constitutes a sufficient basis for denying Applicant a resident insurance producer license pursuant to *Neb. Rev. Stat.* §44-4059(1)(f).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended to the Director of Insurance that the Director approve Applicant's request for licensing as a resident insurance producer.

Dated this 6th day of June, 2006.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

Christine M. Neighbors
HEARING OFFICER

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of the Department In The Matter of the Denial of Application For License For Heather Evers, Cause No.: A-1667.

Dated this 6th day of June, 2006.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Applicant by mailing a copy to Applicant at 1010 Parkway Drive, Bellevue, NE 68005, by certified mail, return receipt requested, on this 7th day of June, 2006.

